

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|---------------------|---|-----------------|
| -----X | | |
| CERIOUS McCRAY, | : | |
| | : | |
| Plaintiff, | : | 10-CV-3930 (CS) |
| | : | |
| -against- | : | <u>ORDER</u> |
| | : | |
| COUNTY OF DUTCHESS, | : | |
| | : | |
| Defendant. | : | |
| -----X | | |

Seibel, J.

Plaintiff has filed a motion for various forms of relief. (Doc. 125.)

Under Valentin v. Dinkins, 121 F.3d 72 (2d Cir. 1997), a *pro se* litigant is entitled to assistance from the district court in identifying a John Doe defendant. Id. at 76. The Plaintiff believes that Patrolman John Doe, a Wappingers Falls police officer named in the Second Amended Complaint, is named Mazzacone, and the Complaint supplies sufficient information to permit identification of the John Doe Defendant who allegedly committed civil rights violations during a traffic stop in March 2008. It is therefore ORDERED that the Attorney for the Village of Wappingers Falls shall ascertain the identity of this Patrolman John Doe Defendant whom Plaintiff seeks to sue here and the address where this Defendant may be served. The Attorney for the Village of Wappingers Falls shall provide this information to Plaintiff and the Court within thirty (30) days of the date of this Order.

In lieu of requiring Plaintiff to file a Third Amended Complaint naming the John Doe Defendant, I will then issue an Order substituting the real name for Patrolman John Doe. Once that Order is entered, the Clerk of Court shall issue a Summons to that Individual and the *Pro Se* Office shall send to Plaintiff a Rule 4 service package. Plaintiff shall then have one hundred and

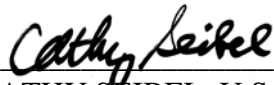
twenty (120) days from the date the Amended Summons is issued to serve the John Doe Defendant with that Summons, the Second Amended Complaint, (Doc. 37), my November 6, 2012 Order, (Doc. 88), and the Order of Substitution that will have been entered. If service of the above documents has not been made within the 120 days, and Plaintiff has not requested an extension of time to serve within that 120 days, the action may be dismissed for failure to prosecute, pursuant to Rules 4 and 41 of the Federal Rules of Civil Procedure, without further notice.

I see no need for the Marshals Service to serve Dutchess County, as it has already answered the Second Amended Complaint. Nor do I see any basis for a stay or equitable tolling. Accordingly, those applications are denied.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is respectfully directed to terminate the pending motion, (Doc. 125).
SO ORDERED.

Dated: March 15, 2012
White Plains, New York



CATHY SEIBEL, U.S.D.J.